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WATERS & THAYER.

THE LAND CASE DECISION.

Opinion of the Court in Full.

SUPREME COURT OF THE UNITED STATES. No. 849.—October Term. Kansas City, Lawrence & Scuthern Ka s Hailroad Company, Appellant,

enjamin Harris Brewster, Attorney-General of the United States, for and on behalf of the United States of America.

[November 8, 18:6.] Mr. Justice Miller delivered the opin-ion of the Court.

This is an appeal from the Circuit Court of he District of Kansas. The suit brought by

construction of this act of 1895, and of certain other statutes on the same subject.

Since the railroad company has constructed the road as contemplated by the statute, and has received the patents for the lands found in place along the line of this road, that is to say, every alternate section, of odd numbers, which had not been previously disposed of, and as the officers of the Government have certified these lands to be properly selected in lieu of such as were not found in place, it would seem to devolve upon the plaintifis to show some reason why this authority has not been properly excretised, for the statute declars that the Secretary shall indicate these indemnity lands. It was his primary duty, and that of the Commissioner of the General Land Office, to ascertain whether any lands, and if so, what amount, were not found subject to the act by reason of previous disposition under the homestead or prevenition inwa or reservations, and office, the indemnity land, They have not office the indemnity land, They have not office the first of these, and the most important, is, that by an act of Marris 3, 1853, and a supplementary act of July 1, 1861, these lands became appropriated to the building of nother road through the same region of country and through the same region of country and through the same length of the same lands. They have been supplementary being to the

plementary act of July I, 1864, these lands be-came appropriated to the building of another road through the same region of country and through the same lands, the grant being to the State of Kansas for the purpose of building that road. It is argued that these grants, instead of being made by Congress in aid of one and the same road, are different and conflicting grants, and that the earlier grants of 1864 and 1864 pre-vent the M., K. & T. R. R. Co. from realizing the bounty of Congress on that subject, because there is in the grant to the State for the benefit of the Union Pacific Railroad Company, south-ern branch, an express/reservation of any lands granted previously for railroad purposes. The language of the act of 1866 on this subject is as follows:

ern branch, an express reservation of any same granted previously for railroad purposes. The language of the act of 1880 on this subject is as follows:

"Provided, that any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding lany other property of the training property of aiding lany other property reserved to the United States from the operations of this act, except so far as it may be found necessary to locate the routes of said road and branches through such reserved land, in which case the right of way only shall be granted, subject to the approval of the President of the United States."

As the lands granted by the prior acts of 1833 and 1861 and, by the act of the legislature of Kansas, been granted to the Atchison, Topeka & Santa Fe Railroad Company, a then existing corporation of that State, for the purpose of building a road, with the same general description as to its course down the valley of the Neohol River, which might have my the latter company, it is after reseased by the latter company, it is arrors necessarily reserved. as being reserved by the authority of Congress for the purpose of aiding in that object of internal improvement. If the A. T. & S. F. R. R. Co. bad built a line of road along the same general course and through the same lands, twenty miles in width, that the M., K. & T. R. R. Co. bad so and though the same lands, twenty miles in width, that the M., K. & T. R. R. Co. bas so and though the same lands, twenty miles in width, that the M., K. & T. R. R. Co. bad built a line of road along the same general course and through the same lands, twenty miles in width, that the M., K. & T. R. R. Co. bas some and the same and along the same served a claim to these lands, or to any of them, the argument would be almost trensitible.

If, at the time that the act of 1860 was passed, the A., T. & S. F. R. R. C. Co., or any other company than the one to which the grant of the acts of 1851 and the 8

made its application for the lands now in controversy, as indemnity lands. It asserted rights under the act the box 1. T. 8.5. F. R. R. C. Of the lands of the fact the box 1. T. 8.5. F. R. R. C. Of the ratification of that assignment by the State of Kanasa, and also under the act of best directly to that company; and it is true that the Secretary of the interfor, while acknowledging the claim to have been made under all the acts, certified the lands to the state of Kanasa in accordance with the terms of the acts of 1863 and 1864, instead of issuing patents directly to the railroad company, as was provided for in the act of 1866. But since that company had all the rights conferred by all three of these statutes, and by the ratification by the state of Kanasa of the transfer from the A. T. & S. F. R. R. Co, and since that State, after these lands were certified to it for the benefit of this company, issued it that the state of these lands it is obvious that the company thus acquired the read ownership and the equitable interest the road, in accordance with the provisions of all the statutes road all the confracts made upon the subject. If there be any informality in the attempt of the Secretary of the Interior and of the State of Kanasas to confer upon the railroad company to seek relief and to have those informalities corrected, not for the United States to set aside its solemn instruments in which those rights are evidenced, and under which not only the railroad company the large those informalities corrected, not for the United States to set aside its solemn instruments in which those rights are evidenced, and under which not only the railroad company the interior and of the State of Kanasas to confer upon the railroad company to seek relief and to have those industries on the saudice of the state of the interior of the language die and to have those informalities corrected, not for the United States to set aside its solemn instruments in which those rights are evidenced, and under which not only the railroad

THE principal argument used by the democrats in favor of result miss the prohibitory amendment has been that it was not adopted by a full vote of the people. In reply to this the republicans have alleged that no amendment ever calls out the full vote. This position is abundantly sustained by total vote cast for governor-all parties -was 273,201. The total vote on the judicial amendment-for and againsttors falled to vote on the proposition either way.

WE have lately received a brief but valuable treatise on Bimetallism, by M. H. Slater secretary of the National Bi-metallic Coin Association. The arguments in favor of giving silver an equal chance with gold are clearly stated and very convincing. We notice, by the way, that the author quotes quite a long extract from the speech of Hon. E. H. Funston, on the silver question, delivered last winter in the House of Representatives. As there were nearly one hundred and fifty speeches delivered by members of the House on this question, this citation from the speech of our "new member" by so high an authority is certainly very much of a compliment.

Year announcement we are glad to learn that the Topeka Capital has prospered to such an extent that it year and add a number of attractive features to its editorial and news departments. These changes will place on a level with the metropolitan dailies and will give us a State paper that is worthy of Kansas. We are glad to labor has not been without reward. When Maj. Hudson took hold of the Capital a few years ago, it was hardly worth the material in the office. By the most unremitting 'labor, and by able and consistent advocacy of principles in which the majority of the people of Kansas believe, the paper has been built up until it is now without question the most valuable newspaper property in Kansas. The friends of Major Hudson all over the State, and they are legion, will rejoice with him in his prosperity and will wish him and the Capital length of days and many honors.

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